



APPENDIX

I

Extract from Brief Below

In the brief below this petitioner, after pointing out that in *Ex parte Worcester County National Bank*, 279 U. S. 347, the charter was terminated by statute at the moment of consolidation, continued:

"But when the state bank entity has passed into the consolidated national bank, the state has lost its control over that entity. It is then a part of an instrumentality of the United States and the state may not impair its usefulness.

"The state is without power to impair the functions of a national bank. The Supreme Court of the United States has said:

'National banks are instrumentalities of the Federal government created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.'

Davis v. Elmira Savings Bank, 161 U. S. 275, 283, 40 L. ed. 701.

"This Court has said:

'National banks are instrumentalities of the Federal government, and as such are necessarily under the paramount authority of the United States. *Davis v. Elmira Savings Bank*, 161 U. S. 275, 40 L. ed. 700, 16 Sup. Ct. 502; *Hawley v. Hurd*, 72 Vt. 122, 47 Atl. 401, 52 L. R. A. 195, 82 Am. St. Rep. 922. There can be no state taxation of a national bank without the consent of Congress. *Mer-*

cantile, etc., Bank v. City of New York, 121 U. S. 138, 30 L. ed. 895, 7 Sup. Ct. 826. The only taxation permitted is upon the real estate of the bank and its shares of stock as the property of its stockholders, and this does not authorize a taxation of the bank's franchise in lieu of the taxation of shares. *Owensboro National Bank v. Owensboro*, 173 U. S. 664, 43 L. ed. 850, 19 Sup. Ct. 537.

State v. Clement National Bank, 84 Vt. 167, 179. (Citing cases.)

"It follows that after City Trust Company had passed into the consolidated bank no state law could operate by changing its charter status to deprive it of its right to act as executor.

"Moreover here the supposed basis of the forfeiture of the state charter of City Trust Company was its failure to pay an annual license tax. But not only was City Trust Company after the merger exempt from such a tax because of the immunity growing out of its national character as above stated, but there was no longer any basis to support a state license tax.

"See *State v. Bradford Savings Bank*, 71 Vt. 234, 239."

II

MATERIAL PARTS OF UNITED STATES STATUTES AS TO TAXATION OF NATIONAL BANKS

R. S. Sec. 5219; Mar. 4, 1923, c. 267, 42 Stat. 1499;
Mar. 25, 1926, c. 88, 44 Stat. 223

12 U. S. C. A. Sec. 548

"The legislature of each State may determine and direct subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several states may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others except as hereinafter provided in subdivision (c) of this clause.

.....

Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed."

III

VERMONT TAXATION OF NATIONAL BANKS

Acts of 1931, No. 17, Part I, Sec. 3

A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect

II. To income received by him on account of the ownership or use of or interest in any stock but the words "income received" shall not include the following items which shall be exempt. . . .

.....

(e) Dividends on stock of those corporations which are subject to taxation under Part II.

Part II, Section 18

The following corporations shall be exempt from the taxes imposed:

I. Corporations organized under the National Banking Act.